

The complaint

Mr M complains in his capacity as director of “A”, a limited company, about AXA Insurance UK Plc’s decision to decline a claim for loss of rent following an escape of water.

What happened

Mr M made a claim on behalf of A, when his tenant reported a leak at the property, causing considerable water damage. Contractors visited the property and reported that parts would need to be ordered and fitted.

Some further water damage occurred in the building and another contractor visited. After three weeks the replacement parts arrived. The first contractor returned and fitted the replacement parts. At some point during the visits, the water supply was switched off by one of the contractors and the tenant had to vacate.

AXA considered the claim, but declined to pay for loss of rent for the period the property was unoccupied. It said A’s policy didn’t cover it for loss of rent in these circumstances, where the property was only uninhabitable because the water had been switched off – not due to the water damage itself.

Mr M was unhappy about AXA’s decision and made a complaint. AXA considered the complaint but said that it maintained its position regarding the loss of rent claim. It said a temporary repair could’ve been carried out so the tenant could’ve remained at the property, but instead of this, one of the contractors switched the water off. It reiterated that the rental losses weren’t payable in the circumstances, as the reason the property was uninhabitable was due to the water supply being switched off when this hadn’t been necessary.

As Mr M didn’t agree with AXA’s response, he referred A’s complaint to this service. Our investigator considered the issues and recommended AXA pay the loss of rent claim. She said she was satisfied the water supply had to be turned off because the first contractor couldn’t offer a temporary fix. And that it wasn’t fair to penalise Mr M for the failure of the contractor to carry out temporary repairs and switch the water off instead.

AXA didn’t agree with our investigator’s recommendations and has asked for an ombudsman’s decision, so the complaint has now come to me to decide.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having done so, I agree with our investigator’s recommendations and I’m upholding this complaint. I’ll explain why.

I’ve looked at the policy terms. These say loss of rental income is covered while the property is unfit to live in, as a result of damage covered by the policy.

Neither party disputes that there was damage to the property as a result of the leak, which

was covered under the policy terms. The issue the parties do not agree on is whether the property was unfit to live in, as a result of that damage. Mr M says it was uninhabitable due to the leak, because there was no other option for the contractors who attended, than to turn off the water supply – and as the property had no water for three weeks, this made it unfit for the tenant to live in. AXA however, says there was no need for the water supply to be switched off, and that a temporary repair could've been carried out, allowing the tenant to remain at the property while the contractors waited for parts to arrive.

There's conflicting information available about which contractor switched off the water supply. But I don't think it matters who turned the water off or when this happened. The key consideration for me is whether enough was done to mitigate the loss. And I'm satisfied that the actions taken by the contractors were reasonable in the circumstances.

AXA has maintained that a temporary repair should've been offered by the first contractor who attended. But the evidence that the first contractor has provided persuades me that this wasn't a viable option. They've said *"All our engineers are instructed to isolate any hot water cylinder if the issue cannot be fixed then and there. Engineers unfortunately do not carry any spare parts for hot water cylinders; therefore, they would have isolated and placed an order, which is the case here."*

I'm satisfied from this information that the first contractor couldn't have carried out a temporary repair. AXA also says the second contractor could have done a temporary fix, but chose not to because the property had already been vacated. The second contractor has said it could've carried out the repair if asked *"however as no one was living at the property we isolated the water to prevent it from happening again in the future"*.

While I don't doubt what either of the contractors have said, I do think the first contractor's actions were reasonable. And I've considered whether any further steps could've been taken by Mr M, once he became aware of the damage, to mitigate his losses. Neither party has been able to point to anything more Mr M could've done.

In the circumstances therefore, I don't think it would be fair to effectively penalise Mr M for the actions of the contractors. And I don't think he would've known that a temporary repair was an option. The first contractor has provided a reasonable explanation as to why a temporary repair wasn't carried out. And the second contractor has also provided a reasonable, albeit different, explanation for why it didn't complete a temporary repair at the time. I've thought carefully about what AXA has said about the fact that the second contractor confirmed a temporary fix would've been possible. But this still doesn't persuade me that the first contractor could've done a repair there and then. It's told us clearly that this wouldn't have been possible at the time for its engineers, and its engineers are instructed to switch off the supply in those circumstances instead. Because of this, the property wasn't fit to live in and the tenant had to vacate. I consider this to be a direct result of the leak, rather than due to the supply being turned off unnecessarily, as AXA has said.

So, because I'm satisfied the property was uninhabitable as a result of the damage, and because Mr M couldn't have been reasonably aware that another option was available, loss of rent should be covered in this case.

Putting things right

In order to put things right, AXA Insurance UK Plc is required to pay A's loss of rent claim in line with the policy terms.

My final decision

My final decision is that I uphold this complaint and require AXA Insurance UK Plc to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 27 April 2022.

Ifrah Malik
Ombudsman